

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**Wireless Telecommunications Bureau
Commercial Wireless Division
Policy and Rules Branch**

In re Application of)	
)	
AWI Spectrum Co., LLC)	
Assignor;)	DA 01-499
)	
and)	Application No. 0000370897
)	
ACI 900, Inc.)	
Assignee,)	
)	
For Consent to Assignment of)	
Specialized Mobile Radio Licenses)	

PETITION FOR RECONSIDERATION

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Date: June 25, 2001

EXECUTIVE SUMMARY

In this proceeding, the Wireless Telecommunications Bureau ("Bureau") approved the assignment of 150 800 MHz and 900 MHz SMR licenses from AWI Spectrum Co., a wholly owned subsidiary of Arch Wireless, Inc. (collectively "Arch Wireless") to ACI 900, Inc., a wholly owned subsidiary of Nextel Communications, Inc. (collectively "Nextel").

Southern Communications Services, Inc. d/b/a Southern LINC[®] ("Southern") believes that the Bureau's approval of this assignment violated the Administrative Procedure Act ("APA"). The Bureau erred by including the 450-470 MHz and 217-219 MHz bands in its definition of the trunked dispatch market. The Bureau also erred in its analysis of the assignment's effects on competition in the trunked dispatch market by ignoring traditional antitrust principles, concluding that Arch Wireless was not a competitor with respect to its 900 MHz MTA SMR licenses, and finding that competition would exist in the post-assignment trunked dispatch market. These decisions were arbitrary and capricious under the APA for one or more of the following reasons: (1) the Bureau disregarded an important issue during its decision-making process; (2) the Bureau neglected to respond to issues raised in Southern's Comments; (3) the Bureau offered an explanation of its decision that was contrary to the evidence on the record; or (4) the Bureau failed to provide a rational explanation.

Southern believes that reconsideration of these decisions would demonstrate that this assignment would result in substantial concentration of the trunked dispatch market. Accordingly, it requests that the Bureau revise the definition of the trunked dispatch market, re-evaluate the effects of this assignment on competition in that market, and ultimately rescind the approval of this assignment as contrary to the public interest.

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PETITION FOR RECONSIDERATION

Pursuant to section 405 of the Communications Act¹ and section 1.106 of the Federal Communications Commission's ("Commission" or "FCC") rules,² and through its undersigned attorneys, Southern Communications Services, Inc. d/b/a Southern LINC® ("Southern") petitions the Wireless Telecommunications Bureau ("Bureau") to reconsider its approval of the assignment of 149 900 MHz Specialized Mobile Radio ("SMR") licenses and one 800 MHz SMR license from AWI Spectrum Co., a wholly owned subsidiary of Arch Wireless, Inc. (collectively "Arch Wireless") to ACI 900, Inc., a wholly owned subsidiary of Nextel Communications (collectively "Nextel").³

¹ 47 U.S.C. § 405 (2001).

² 47 C.F.R. § 1.106 (2000).

³ See In re Application of AWI Spectrum Co., For Consent to Assignment of Specialized Mobile Radio Licenses, *Order*, DA 01-1268 (WTB rel. May 25, 2001) [hereinafter *Arch Wireless Order*].

I. INTRODUCTION

Southern operates an advanced digital communications system using Motorola's iDEN technology, the same advanced technology as Nextel. Southern provides digital dispatch, text messaging, paging, interconnected voice, and Internet service, all on a single handset, throughout most of the states of Alabama and Georgia, the panhandle of Florida, and southeastern Mississippi. It provides the most comprehensive geographic coverage of any mobile wireless service in Alabama and Georgia and serves areas of Florida and Mississippi not served by other advanced wireless providers. Southern's service is used by statewide public safety agencies, local governments in rural areas, and public utilities, commercial users, and government customers operating in rural and urban areas.

Southern has actively participated over the past several years in various Commission proceedings involving the preservation of competition.⁴ Most recently, it filed a Petition for Reconsideration of the Bureau's approval of the assignment of 59 900 MHz SMR licenses and authorizations from Motorola to FCI 900, a wholly owned subsidiary of Nextel Communications.⁵

In the present proceeding, the Wireless Telecommunications Bureau ("Bureau") issued an *Order* on May 25, 2001 in which it approved the assignment of 150 800 MHz and 900 MHz licenses from Arch Wireless to Nextel. Southern requests that the Bureau reconsider its approval of this assignment because its definition of the relevant product

⁴ In the Matter of Biennial Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, *Comments of Southern*; In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Comments of Southern*; In the Matter of Geotek Comms., Inc., Application for Consent to Assign 900 MHz SMR Licenses, DA 99-1027, *Petition to Deny of Southern*; In the Matter of Motorola, Inc., DA 00-2352, *Comments of Southern LINC*.

⁵ In re Applications of Motorola, Inc., For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses, DA 01-947, *Petition for Reconsideration of Southern LINC*.

market and its market analysis were arbitrary and capricious. The Bureau erroneously included the 450-470 MHz and 217-219 MHz bands in its definition of the trunked dispatch market despite evidence that licensees in these bands could not provide a viable competitive alternative to Nextel's trunked dispatch service. The Bureau also acted arbitrarily and capriciously in its market analysis by (1) ignoring traditional antitrust principles; (2) concluding that Arch Wireless was not a competitor with respect to its 900 MHz MTA SMR licenses because it does not offer services on those licenses at this time; and (3) concluding that competition would exist in the trunked dispatch market after the assignment.

Because of these arbitrary and capricious decisions, Southern requests that the Bureau revise its definition of the trunked dispatch market and re-evaluate the effects of this proposed assignment on competition in this market. Southern believes that reconsideration of these conclusions in accordance with its requests would demonstrate that this assignment would result in substantial concentration of the trunked dispatch market. Thus, the Bureau should ultimately rescind its approval of this assignment as contrary to the public interest under section 310(d).

II. THE BUREAU'S DECISION TO APPROVE THE ASSIGNMENT OF LICENSES FROM ARCH WIRELESS TO NEXTEL WAS ARBITRARY AND CAPRICIOUS

A. Standard Of Review

The Administrative Procedure Act requires administrative agencies to engage in rational decisionmaking.⁶ Under section 706(2)(A), "a reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" ⁷ To

⁶ See 5 U.S.C. §706(2)(A) (2001).

⁷ *Id.* (emphasis added).

determine if an agency action is arbitrary or capricious, a reviewing court will examine whether the agency considered the relevant factors,⁸ articulated a "rational connection between the facts found and the choice made,"⁹ or made a clear error of judgment.¹⁰

In its review of an agency's conclusions, a court will consider "if the agency has relied on factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."¹¹ A reviewing court "will not supply the basis for the agency's action, but instead rel[ies] on the reasons advanced by the agency in support of the action."¹² In addition, the U.S. Supreme Court has "frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner."¹³ Agency action accompanied by an inadequate explanation constitutes arbitrary and capricious conduct.¹⁴

⁸ See *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971) (citing 5 U.S.C. § 706(2)(A)).

⁹ *AT&T Corp. v. FCC*, 236 F.2d 729, 734 (D.C. Cir. 2001) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)); *City of Brookings Mut. Tel. Co. v. FCC*, 822 F.2d 1153, 1165 (D.C. Cir. 1987) (same).

¹⁰ See *Citizens to Preserve Overton Park, Inc.*, 401 U.S. at 416 (citing 5 U.S.C. § 706(2)(A)).

¹¹ *Motor Vehicle Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹² *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 758 (6th Cir. 1995).

¹³ *Motor Vehicle Ass'n*, 463 U.S. at 48-49 (citing *Atchison, T. & S.F.R. Co. v. Wichita Bd. of Trade*, 412 U.S. 397, 416 (1967)).

¹⁴ *FEC v. Rose*, 806 F.2d 1081, 1088 (D.C. Cir. 1986).

B. The Bureau's Inclusion Of The 450-470 MHz And 217-219 MHz Bands In Its Definition Of The Product Market For Trunked Dispatch Services Was Arbitrary And Capricious

1. 450-470 MHz

The Bureau erred by including 5 MHz of the 450-470 MHz band in its definition of the trunked dispatch market without adequately considering an important issue related to the use of this band. Specifically, the Bureau failed to address the practical limitations in this band caused by the heavy congestion of licensees in major urban markets. Although the Bureau's rules allow trunked dispatch service on the 450-470 MHz band, and at least one report indicates that some 800 MHz SMR trunked dispatch customers have migrated to the 450-470 MHz band,¹⁵ previous reviews of this market as well as Southern's supplemental economic analysis indicate that the Bureau should not have included *any* part of the 450-470 MHz frequency band in its definition of the trunked dispatch market.¹⁶

The 450-470 MHz band is an extremely unlikely source of competition to Nextel because of practical limitations inherent in the shared-basis licensing regime. These practical limitations primarily result from this band's heavy congestion in most major urban areas.¹⁷ As discussed in Southern's Comments, congestion reduces the quality of

¹⁵ See In re Applications of Motorola, Inc., For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses, *Order*, DA 00-947 ¶ 20 (citing Strategis Report, U.S. Dispatch Markets, Executive Summary, at 72 (Jan. 2000)) [hereinafter *Motorola Order*].

¹⁶ See In the Matter of Arch Wireless, Inc., Application for Consent to Assign 800 and 900 MHz SMR Licenses to ACI 900, Inc. and Nextel Communications, Inc., *Southern Comments*, Exhibit A, at 17-20 (Baumann and Siwek Supplemental Affidavit) [hereinafter *In the Matter of Arch Wireless*]; Response of the United States to Public Comments on the Proposed Modified Consent Decree, *United States v. Motorola, Inc.*, CIV.A. 94-2331 (TFH), at 11-12, n.11 (filed Aug. 26, 1999); Memorandum of the United States in Opposition to Nextel's Motion to Vacate the 1995 Consent Decree, *United States v. Motorola, Inc.*, at 17 (filed Feb. 26, 1999).

¹⁷ See In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Report and Order and Further Notice of Proposed Rulemaking*, 15 F.C.C. Rcd. 22709 ¶ 95 (2000) [hereinafter *Balanced Budget Act Report and Order*].

voice transmissions to the point that customers would not likely consider it an adequate alternative to Nextel's service.¹⁸ In addition, licensees in this band cannot trunk their channels without obtaining consent from all existing licensees in the area, a nearly impossible task considering the congestion in the band.¹⁹ Licensees that obtain the consent necessary for a trunked system are initially limited to only ten channels, hardly enough to operate a competitive system.²⁰ Thus, the heavy congestion in this band effectively precludes the near-term development of a viable competitive market. The Commission itself recently recognized the prohibitive nature of the congestion by declining to adopt geographic licensing and competitive bidding rules for this spectrum, thus preventing widespread commercial services and the rapid expansion of trunked dispatch use on the 450-470 MHz band.²¹

The Department of Justice also concluded that significant entry into dispatch markets would not come from licensees in the 450-470 MHz band. In a 1999 filing that was generally favorable to Nextel, the Department of Justice refused to endorse the 450-470 MHz band as a trunked dispatch option, concluding that "trunked dispatch providers sufficient to serve as real alternatives for customers would be unlikely to emerge in the 450 MHz band in the near term."²²

Thus, because of the practical limitations associated with the large number of incumbent licensees in this band, the 450-470 MHz band is not likely to provide a viable

¹⁸ See *In the Matter of Arch Wireless, Comments of Southern*, at 15.

¹⁹ See *id.*; see also *Balanced Budget Act Report and Order*, 15 F.C.C. Rcd. 22709 ¶ 95 (ruling that heavy congestion "would create nearly impossible due diligence requirements").

²⁰ See *In the Matter of Arch Wireless, Comments of Southern*, at 15.

²¹ See *Balanced Budget Act Report and Order*, 15 F.C.C. Rcd. 22709 ¶ 95-96.

²² Response of the United States to Public Comments on the Proposed Modified Consent Decree, *United States v. Motorola, Inc.*, CIV.A. 94-2331 (TFH), at 11-12, n.11 (filed Aug. 26, 1999).

competitive alternative to Nextel's trunked dispatch service in the near future. By including 5 MHz of the 450-470 MHz band in the definition of the trunked dispatch market, despite considerable evidence indicating that this band would not provide a viable competitive alternative, the Bureau acted arbitrarily and capriciously.

2. 217-219 MHz

The Bureau also erred by including the 217-219 MHz band in its definition of the trunked dispatch market because it disregarded evidence indicating that carriers in this band could not offer viable competitive service and failed to respond to the issues raised in Southern's Comments.

As discussed in Southern's supplemental economic analysis, competitive trunked dispatch service is not likely to emerge in the 217-219 MHz band because of spectrum, technical, and practical limitations.²³ Entry by new commercial users is unlikely because they must protect marine mobile transmissions and nearby television channels from interference.²⁴ In addition, existing licensees could not provide a viable competitive alternative to Nextel's trunked dispatch service because they lack a sufficient amount of spectrum, use outdated technology, and have indicated an intention to reduce their operations.²⁵ Finally, users of this band are subject to several technical constraints: they must operate at low power, in close proximity to major bodies of water, and with strict time limitations on the duration of voice calls.²⁶ Because of these extensive limitations, licensees on this spectrum could not offer a viable competitive alternative to Nextel's trunked dispatch service. Despite this overwhelming evidence, however, the Bureau included this spectrum in its definition of the trunked dispatch market. By ignoring the

²³ See *In the Matter of Arch Wireless, Comments of Southern*, Exhibit A, at 21-25 ¶ 89-108.

²⁴ See *id.* at 21, 23 ¶ 91, 100.

²⁵ See *id.* at 23, 24 ¶ 101, 102, 104, 105.

²⁶ See *id.* at 21, 24 ¶ 91, 103; see also *Arch Wireless Order*, DA 01-1268, at 11 ¶ 19.

weight of the evidence, and inadequately addressing the inherent limitations of this band that Southern raised in its supplemental economic analysis, the Bureau acted arbitrarily and capriciously.

Thus, the Bureau should revise its definition of the relevant product market to exclude all of the 450-470 MHz band as well as the 217-219 MHz band. Because Southern believes that a revision of the product market definition would alter the Bureau's analysis of the effects of this assignment on competition in the trunked dispatch market, it also requests that the Bureau reconsider its market analysis and rescind the approval of the assignment as contrary to the public interest under section 310(d).

C. The Bureau's Market Analysis Was Arbitrary And Capricious

1. The Bureau's decision to approve this assignment was arbitrary and capricious because it ignored traditional antitrust principles

The Bureau also erroneously decided not to follow, or rationally explain its departure from, traditional antitrust principles in its analysis of the assignment's effect on competition in the trunked dispatch market. Although the Bureau is not bound by the antitrust principles, it uses them as a guide to determine if the assignment is in the public interest.²⁷ Because the Bureau failed to provide a rational reason for not following these well-established principles, its market analysis was arbitrary and capricious.

Under a traditional antitrust analysis, a transaction must

be functionally viewed, in the context of a particular industry. That is whether the consolidation was to take place in an industry that was fragmented rather than concentrated, that had seen a recent trend toward domination by a few leaders or had remained fairly consistent in its distribution of market shares among the participating companies, that had experienced easy access to suppliers by buyers or had witnessed foreclosure

²⁷ See *AirTouch Comms., Inc.*, 14 F.C.C. Rcd. 9430, 9435 ¶ 10 (1999) ("Under Commission precedent, [the] public interest analysis is not limited to traditional antitrust principles, but also encompasses the broad aims of the Communications Act.").

of business, that had witnessed the ready entry of new competition or the erection of barriers to prospective entrants²⁸

In addition, the elimination of prospective competitors is always a paramount consideration in an antitrust analysis of market concentration.

As stated in Southern's Comments, Nextel dominates the trunked dispatch market.²⁹ Because Nextel holds so much spectrum, new carriers have little opportunity to acquire the critical mass of channels in any given area needed to provide competitive service.³⁰ The disparity in size between Nextel and prospective entrants or small competitors also means that vendors may find it more profitable to allocate their productive resources to Nextel.³¹ Nextel's spectrum holdings in the 800 MHz and 900 MHz SMR bands enable it significantly to hinder the growth of existing carriers and the entry of other competitors.

In addition, over the past several years, Nextel has dramatically consolidated the trunked dispatch market. For example, within the past year, Nextel has contracted to purchase the spectrum licenses of two of the top five major SMR providers.³² The Bureau's approval of this transaction would merely exacerbate Nextel's control over the trunked dispatch market and detrimentally affected the likelihood of increased competition.

Thus, by failing to explain why it did not apply the traditional antitrust principles to this application and focus on dominance in the market and consolidation, the Bureau acted arbitrarily and capriciously. The Bureau also acted arbitrarily and capriciously by failing to respond adequately to Southern's concerns about these issues, even though Southern raised them in its Comments. Accordingly, Southern requests that the Bureau reconsider

²⁸ *Brown Shoe Co. v. United States*, 370 U.S. 294, 321-22 (1962).

²⁹ *See In the Matter of Arch Wireless, Comments of Southern*, at 10-12, 18.

³⁰ *See id.* at 12.

³¹ *See id.*

³² *See id.* at 18-19.

its market analysis with respect to these traditional antitrust principles and rescind its approval of this assignment as against the public interest under section 310(d).

2. The Bureau's decision to focus on the existing use of the 134 900 MHz MTA licenses, rather than the exclusive nature of the spectrum holdings, in its market analysis was arbitrary and capricious

The Bureau erred by concluding that the assignment of licenses from Arch Wireless to Nextel would not eliminate Arch Wireless as a competitor. In its market analysis, the Bureau discounted the adverse competitive impact resulting from the assignment of these licenses because Arch Wireless had not commenced operation on those licenses.³³ According to the Bureau, "consumers will have the same access to alternative services and service providers after the transaction as they currently have."³⁴ The Bureau's decision was arbitrary and capricious because it failed to provide a rational reason for excluding these non-operational licenses from its market analysis.

Although Arch Wireless does not currently operate on its 134 900 MHz MTA licenses, spectrum usage is not the only means of assessing the existence of competition in the trunked dispatch market. Spectrum holdings are also an indicator of competition because a finite number of licenses exist and because a license grants the holder the primary use of the frequency for a given number of years. Thus, if an entity holds a license, it controls a portion of the market, regardless of whether the particular license is operational.

Spectrum holdings are also an appropriate proxy for competition because licensees must provide service within a specific number of years after obtaining the license. Pursuant to the applicable construction deadline, licensees must build-out their systems by a specific date or they forfeit the license. In the interim, however, the licensee has the

³³ See *Arch Wireless Order*, DA 01-1268 ¶ 14.

³⁴ *Id.*

exclusive control over the frequency. Thus, the mere fact that a licensee holds a license presupposes that it will offer service as a competitor in the market.³⁵

Properly focusing on spectrum holdings rather than spectrum usage shows that the assignment of the 134 900 MHz MTA licenses held by Arch Wireless would eliminate Arch Wireless as a competitor. Although the Bureau could not predict the specific use of the licenses at the time of the transaction, customers would *not* have the same number of competitive service providers after the transaction as before the transaction because the previously fragmented spectrum holdings would become consolidated in one licensee, Nextel.

Southern believes that the Bureau erred in not properly considering the impact of the elimination of Arch Wireless as a competitor with respect to these 134 900 MHz MTA licenses. Because the Bureau's current analysis only takes into account the loss of a competitor on sixteen licenses, the inclusion of these 134 licenses in the market analysis should substantially alter the Bureau's analysis of the proposed assignment by raising public interest concerns about the consolidation of spectrum that the Bureau has not adequately considered in this proceeding. Because the Bureau failed to provide a rational reason for not basing its market analysis on spectrum holdings, its conclusion was arbitrary and capricious. Accordingly, Southern requests that the Bureau reconsider its market analysis and rescind its approval of the assignment because of the detrimental effects of spectrum consolidation on the public interest.

³⁵ Because the Bureau recently granted a blanket extension of the construction deadline to all 900 MHz licensees, Arch Wireless would have to offer service on these 134 900 MHz MTA licenses by December 31, 2002. *See In the Matter of FCI 900, Inc. Expedited Request for 3-Year Extension of 900 MHz Band Construction Requirements, Memorandum Opinion and Order*, DA 01-1297 ¶ 1 (rel. May 25, 2001).

3. The Bureau's conclusion that competition would exist after the assignment was arbitrary and capricious

The Bureau also erroneously concluded that competition would exist in the trunked dispatch market after Nextel's acquisition of the 15 900 MHz DFA SMR licenses and the one 800 MHz SMR license from Arch Wireless. The Bureau found that competition would exist in the post-assignment market from existing firms, near-term and long-term entrants, and alternative dispatch services.³⁶ The Bureau's decision is arbitrary and capricious because its conclusion runs counter to the weight of the evidence and because it failed to provide a rational explanation of the reasons underlying its conclusion.

The Bureau's conclusion is erroneous because the alternative sources of competition that it lists in the *Arch Wireless Order* have minimal competitive value due to their limited capacity or practical limitations. The near-term and long-term entrants would not offer viable competitive alternatives to Nextel's trunked dispatch service. As explained previously in Section II.B, the 450-470 MHz and 217-219 MHz bands are not viable competitive alternatives. In addition, the 220 MHz band lacks the capacity to provide a viable competitive alternative to Nextel's trunked dispatch service because it only offers 2 MHz of spectrum, an amount that is hardly sufficient to pose a competitive threat to Nextel.³⁷ Although some competitive providers may initiate service in the 220 MHz band, the Commission itself recognized that "the capacity to be deployed by 220 MHz carriers alone will not be sufficient to prevent competitive harm from arising here."³⁸ Finally, the other potential near-term and long-term entrants that the Bureau identified are unlikely to provide viable competitive alternatives for the reasons discussed in Southern's Comments.³⁹

³⁶ See *Arch Wireless Order*, DA 01-1268 ¶ 14 n.42.

³⁷ See *In the Matter of Arch Wireless, Comments of Southern*, at 13-14.

³⁸ *In the Matter of Geotek*, 15 F.C.C. Rcd. 790, 808 ¶ 40 (2000).

³⁹ See *In the Matter of Arch Wireless, Comments of Southern*, at 12, 17.

The traditional dispatch, private dispatch, and data dispatch services also would not offer consumers a viable competitive alternative to Nextel's trunked dispatch service. While some consumers could conceivably substitute these services for trunked dispatch service, Southern does not believe that a significant amount of competition is likely to arise for these services and systems because each service suffers from fundamental limitations. As Southern stated in its Comments, traditional dispatch service does not offer the technological advances necessary to satisfy companies with even moderate dispatch requirements.⁴⁰ In addition, private dispatch systems are prone to spectrum shortages, preventing companies from expanding to meet their communications needs.⁴¹ Finally, data dispatch services are inherently different from trunked dispatch because they are, by definition, non-voice services.⁴²

Despite this evidence that near-term and long-term entrants and alternative dispatch services would make no appreciable difference in the amount of competition in the trunked dispatch market, the Bureau concluded that competition would exist after this assignment. By reaching a conclusion contrary to the weight of the evidence, the Bureau acted arbitrarily and capriciously.

Second, the Bureau erred by failing to explain the reasons or provide any evidence supporting its conclusion that competition would exist in the post-assignment trunked dispatch market. Although the Bureau found that competition would exist from other firms, near-term and long-term entry, and alternative dispatch services, it did not provide any details regarding the manner in which it had determined Nextel's market power or had balanced Nextel's dominance and consolidation of the 800 MHz and 900 MHz bands against the allegedly viable competitive alternatives. Because the Bureau failed to explain

⁴⁰ See *id.* at 18.

⁴¹ See *id.*

⁴² See *id.*

its reasoning, Southern is concerned that the Bureau may have improperly excluded a portion of Nextel's 800 MHz licenses from its market analysis, as it did in the *Motorola Order*,⁴³ or accorded an inappropriate amount of weight to the existence of near-term or long-term entrants or of alternative dispatch services. Thus, the Bureau acted arbitrarily and capriciously by failing to explain how it reached its conclusion.

Accordingly, Southern requests that the Bureau reconsider the its market analysis after redefining the definition of the trunked dispatch market, applying the traditional antitrust principles, including the 135 900 MHz MTA licenses as competitive alternatives, and excluding the near-term and long-term entrants and the alternative dispatch services from consideration as viable competitive alternatives.

III. CONCLUSION

The Bureau should reconsider its approval of the assignment of 150 800 MHz and 900 MHz SMR licenses from Arch Wireless to Nextel because the Bureau acted arbitrarily and capriciously in its definition of the trunked dispatch market as well as in its analysis of the effects of this assignment on competition in that market. The Bureau's product market definition erroneously included the 450-470 MHz and 217-219 MHz bands. In addition, the Bureau erred in its market analysis by (1) ignoring traditional antitrust principles; (2) concluding that Arch Wireless was not a competitor in the trunked dispatch market with respect to 134 of its 900 MHz MTA licenses because it does not offer service on these licenses; (3) concluding that competition would exist in the trunked dispatch market after the assignment. Thus, Southern requests that the Bureau revise its definition of the trunked

⁴³ See *Motorola Order*, DA 00-2352 ¶ 28.

dispatch market, re-evaluate its market analysis, and ultimately rescind its approval of this assignment as contrary to the public interest under section 310(d).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jane Aguillard, hereby certify that on this 25th day of June, 2001, a copy of the foregoing Petition for Reconsideration of Southern LINC[®] was served as indicated on each of the following:

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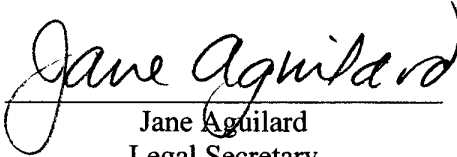
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